

REMARKS

This is in response to the Office Action dated December 11, 2008. Claim 1 is amended, based upon claim 2, and claim 2 is accordingly cancelled, without prejudice. Additionally, lower limits of hydroxy carboxylic acid units of 5 or less carbon atoms in claims 1 and 3 are specified to be 60% by mol, based upon such disclosure as that in lines 8-18 on page 9 of the specification. Claims 1, 3, and 4 are now pending in the application.

Claims 1-4 were rejected under 35 U.S.C. § 102(b) as being anticipated by US 4,729,927 (Hirose). Office Action, pages 2-3. To the extent that it might be applied to claims 1, 3, and 4 in their current form, the rejection is respectfully traversed.

Hirose discloses polyester packaging material comprising a polyethylene terephthalate component and a polyethylene isophthalate component copolymerized with 5 to 60 mol% of an aliphatic hydroxycarboxylic acid having up to 8 carbon atoms. *In contrast*, the present invention is a melt mixture of Applicants' specific component (A) and a crystalline polyester (B) in a specific ratio, wherein the specific component (A), which is a copolyester of a polyoxycarboxylic acid, contains 60 to 100% by mol of hydroxy carboxylic acid units of 5 or less carbon atoms in all the constituent units of the hydroxy carboxylic acid in Applicants' component (A).

In Examples 1-4 and 7-9 of Hirose, polyesters A and B are used. However, these Hirose polyesters are formed into multi-layer structures that are merely laminates of polyester A and B. In Examples 1-4 and 7-9 of Hirose, polyesters A and B are not melt-mixed.

By melt-mixing Applicants' specific component (A), which contains a specific amount of hydroxy carboxylic acid units, with (B) the crystalline polyester, the presently claimed polyester resin composition having the relationship $0.03 < S_{AA}/S_{BB} < 30$ is provided. Hirose fails to teach or suggest a melt mixture of Applicants' specific component (A) and the crystalline polyester (B). Furthermore, Hirose fails to teach or suggest that such composition has the relationship S_{AA}/S_{BB} required by Applicants' claims. It is manifest that the presently claimed invention is not anticipated by Hirose.

Moreover, in the paragraph bridging columns 2-3, Hirose teaches that “If the copolymerization ratio of the aliphatic hydroxycarboxylic acid exceeds 60 mole%, the thermal stability at the molding step and the physical properties, especially the mechanical strength, of the molded articles are degraded. It is preferred that the copolymerization ratio of the aliphatic hydroxycarboxylic acid be 10 to 50 mole%.” In fact, as shown in Tables 1-3 of Hirose, the content of hydroxycarboxylic acid in Polyester B in Hirose is almost always 50 mole% (with 17 mole% and 30 mole% in just two Examples). Such contents are too small in the context of Applicants’ invention.

Also, the technical concept “hydroxy carboxylic acid units of 5 or less carbon atoms are contained in amounts of 60 to 100% by mol based on 100% by mol of all the constituent units in (A)” – expressly required by Applicants’ claims – is neither taught nor suggested by Hirose.

The presently claimed invention considered as a whole is, therefore, not obvious from the Hirose disclosure. Withdrawal of all rejections based upon Hirose is in order and is earnestly solicited.

Claims 1-4 were rejected on the ground of obviousness-type double patenting over claims 4-6 of US 7,153,587 B2 (the ‘587 patent). Office Action, pages 3-4. The rejection is respectfully traversed. The ‘587 patent claims a laminate (“laminate having ... a layer comprising an oxycarboxylic acid-copolymerized polyester resin (A) and a layer comprising crystalline polyester resin (B)”) of two polyester layers. In contrast, the present invention claims a composition which is a melt mixture (“polyester resin composition obtained by melt mixing (A) a copolyester or a polyoxycarboxylic acid ... with (B) a crystalline polyester which is not identical with the component (A)”) of two polyesters. Thus, the compositions (mixtures) of the present invention differ substantially (and non-obviously) from the laminates (different components in distinct layers) of claims 4-6 of the ‘587 patent. Withdrawal of the double patenting rejection is in order and is earnestly solicited.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Richard Gallagher, Reg. No.

28,781, at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37.C.F.R. §§1.16 or 1.17; particularly, extension of time fees.

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Respectfully submitted,

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